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RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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SI (99)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Alice Svenson, individually and on behalf of
all others similarly situated,

ADR

Plaintiff,

v.

e-filing

Google, Inc., a Delaware Corporation, and
Google Payment Corporation, a Delaware
Corporation,

Defendants.

Case No.: CV 13-04080 HRL

CLASS ACTION

COMPLAINT FOR VIOLATIONS
OF THE STORED
COMMUNICATIONS ACT,
BREACH OF CONTRACT,
AND, CAL. BUS. PROF. CODE §
17200

DEMAND FOR JURY TRIAL

Class Action Complaint

NOW COMES Plaintiff, Alice Svenson, individually and on behalf of all others who are similarly situated, by and through her counsel, and, upon personal knowledge as to facts known to Plaintiff, and upon information and belief following investigation of counsel as to other facts, alleges as follows against Defendants Google, Inc. and Google Payment Corporation:

Introduction

1. This case seeks relief for Plaintiff and similarly situated users of Defendants' online mobile application market ("Google Play") and payment processing services ("Google Wallet").

1 whose private information was disclosed to third-parties without authorization, in violation of
2 applicable law, and in violation of Defendants' terms of use.

3 2. Defendants have at relevant times disclosed to third-party software developers, via Google
4 Play and Google Wallet, user information without their knowledge, consent, or authorization.
5 The terms of use for Defendants' services do not allow for this activity, the result of which is that
6 users' names, home cities, states, and zip codes, Google account names and/or email addresses,
7 and in some instances telephone numbers have been unnecessarily proliferated across the globe to
8 third-party software developers without purpose or user recourse.

9 **Parties**

10 3. Plaintiff is an individual and a citizen of the State of Illinois.

11 4. Defendant Google, Inc. ("Google") is a Delaware corporation with its principal place of
12 business in Mountain View, California.

13 5. Defendant Google Payment Corporation ("Google Payment Corp") is a Delaware
14 corporation and wholly-owned subsidiary of Google that shares Google's principal place of
15 business in Mountain View, California.

16 **Jurisdiction**

17 6. This Court has subject matter jurisdiction over the federal claims in this complaint
18 pursuant to 28 U.S.C. § 1331 as those claims arise under the laws of the United States.

19 7. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because: (i) Plaintiff
20 Svenson is a citizen of the State of Illinois; (ii) Defendants Google and Google Payment Corp
21 have their principal place of business in the State of California; and (iii) based on the total value
22 of the claims and relief sought by Plaintiff individually and on behalf of the Class, the total
23 amount in controversy exceeds \$5,000,000.00. The proposed Class numbers in excess of 100
24 persons.

25 8. Alternatively, pursuant to 28 U.S.C. § 1367(a) this Court has supplemental jurisdiction
26 over the claims in this complaint that arise under state law, because the state law claims are so
27 related to the federal claims that they form part of the same case or controversy and derive from a
28 common nucleus of operative facts.

1 **Venue**

2 9. Venue is proper before the Court pursuant to 28 U.S.C. § 1391(b) because, *inter alia*, this
3 is a judicial district in which Google and Google Payment Corp reside and in which a substantial
4 part of the events or omissions giving rise to the claims occurred.

5 **Factual Allegations**

6 ***Google's Operation***

7 10. Google provides internet search functionality, email services, virtual filing cabinet
8 "cloud" storage services, multimedia electronic distribution platforms, social media services,
9 advertising services, and payment processing services, among many others (collectively, the
10 "Google Services").

11 11. All of these services are integrated for users who register for Google Accounts.

12 12. Google's Services utilize and store personal information on data center server farms
13 dotted throughout the country and/or the world.

14 13. On information and belief, Google Payment Corp's services are provided via Google's
15 data center server farms.

16 14. Google Payment Corp, a privately-held and wholly-owned subsidiary of Google, provides
17 Google with the payment processing services incorporated into Google Wallet.

18 15. Google Payment Corp's shares its principal place of business – 1600 Amphitheatre
19 Parkway Mountain View, CA 94043 – with Google.

20 16. Google Payment Corp shares its registered agent in California with Google and Kent
21 Walker, a Google Payment Corp director, is Google's Senior Vice President & General Counsel.

22 ***Google Wallet and Google Play***

23 17. Google Wallet, formerly known as Google Checkout, is Google's electronic and mobile
24 payment processing service. Since 2011, Google Wallet has allowed Google account users to
25 store electronic payment card information within their Google accounts and utilize those means to
26 complete payment with various sellers including:

- 27 a. Brick-and-mortar merchants who sell and/or deliver physical goods;
28 b. Online, virtual merchants who sell and deliver physical goods; and

c. Vendors who sell electronically-delivered digital content and software applications – collectively, “Apps” – and digitally distribute Apps to users via Google Play.¹

18. “Google Wallet is the company’s payments platform and answer to PayPal, which allows users to store their debit and credit cards in a secure service for easy access.”²

19. By using Google Wallet, users expect to benefit from a safe, centralized way to pay for goods and services, especially when those transactions occur online, with Defendants acting as the intermediaries which securely process and effect the transactions. Indeed, Google has represented to users, in google.com web pages, that “Google takes the privacy of your information seriously,” and has further stated as follows:

When you use Google Wallet, your financial information is safely encrypted and stored on secure servers, and all transactions are monitored 24/7 to prevent fraudulent activity.

....

The credit and debit cards you store in Google Wallet are safely encrypted on secure servers in secure locations.³

20. Users wishing to utilize Google Wallet must have existing Google Accounts, and Google purports to require Google Account and Google Wallet users to abide by the Google Terms of Service (“GToS”) and Google Privacy Policy (“GPP”) (individually and collectively hereinafter, unless otherwise or as specifically noted, the “Google Terms”) and promises to deliver the Google Services according to these terms.⁴

21. The Google Wallet Terms of Service (“GWToS”) provide that users “understand and agree that personal information provided to Google or Google Payment Corp in connection with the Services is subject to the Google Wallet Privacy Policy” and that “[b]y agreeing to these Terms of Service [user] hereby agree[s] to the Google Wallet Privacy Policy” (“GWPP”).

¹ <https://support.google.com/checkout/sell/answer/173779?hl=en>, visited September 3, 2013.

² <http://techcrunch.com/2013/07/25/google-wallet-for-gmail-invites-start-rolling-out-to-more-users/>, visited July 26, 2013.

³ <http://www.google.com/wallet/send-money/>; <http://techcrunch.com/2013/07/25/google-wallet-for-gmail-invites-start-rolling-out-to-more-users/>, visited July 26, 2013.

⁴ See, <https://wallet.google.com/legaldocument?family=0.buyertos&gl=US>, accessed [hereinafter GWToS].

1 22. The GWToS, incorporating the GWPP (hereinafter jointly, the “Wallet Terms”), at
2 relevant times purported to be a “legal agreement” between the user, “Google, and Google
3 Payment Corp., a wholly-owned subsidiary of Google Inc., which governs [user’s] access to and
4 use of Google Wallet.”

5 23. The user initiates the Google Wallet registration process by using her Google account
6 information (e.g., Google email address and password) and agreeing to abide by the Wallet
7 Terms.

8 24. The Wallet Terms require the user to agree to, among others, the following term: “By
9 agreeing to these Terms of Service, you authorize Google Wallet to charge your selected card,”
10 and “[y]ou understand and agree that personal information provided to Google or GPC [Google
11 Payment Corp.] in connection with the Services is subject to the Google Wallet Privacy
12 Notice: <http://www.google.com/wallet/>.”

13 25. Utilizing Google Wallet to make payments requires that the user “add a payment method”
14 to her account. Selecting to do so prompts the user to enter a credit or debit card number,
15 “Expiration Date” (MM/YY), “Security Code” (CVC), “Billing Information” (including, e.g.,
16 Name, Apt./Suite, City, State, and Zip Code), and Phone Number.

17 26. Google Play is Google’s digital multimedia content distribution platform that is accessible
18 via mobile devices and other internet-capable computing equipment. Google Wallet may be used
19 to purchase digital content via Google Play.

20 27. A user wishing to utilize Google Play to obtain digital content is required to first have an
21 existing Google Account. The user initiates the Google Play registration by, while being logged
22 into his Google Account, agreeing to Google Play’s Terms of Service (“GPToS”).⁵

23 28. Utilizing Google Wallet on a computing device to purchase digital services or content
24 from the Google Play store requires users to activate Google Wallet prior to payment for and
25 instant download of the desired services or content onto their electronic device – a process which
26

27
28 ⁵ See, http://play.google.com/intl/en_us/about/play-terms.html, accessed September 3, 2013.

1 requires or purports to require user agreement to all of the herein described and incorporated
2 terms of service and privacy policies.

3 29. Speaking to the user, the Google Play Terms of Service provide that “[i]n order to access
4 certain services in Google Play, you may be required to provide information about yourself such
5 as your name and billing details. Google’s privacy policies explain how we treat your personal
6 data and protect your privacy when using Google Play. You agree that any such information you
7 provide to Google will always be accurate, correct and up to date.”

8 30. Google Play does not have a separate privacy policy, but the Google Play Terms of
9 Service incorporate the above-referenced Google Privacy Policy.

10 31. Upon registration with Google Play, the user is allowed to access a library of digitally-
11 distributed content, including Apps. A user wishing to purchase an App through Google Play is
12 prompted to agree again to the GWToS and confirm their intent to purchase, and if not signed in
13 enter her previously-supplied Google Wallet account information or, if the user has not
14 previously registered with Google Wallet or is prompted by Defendants, is prompted to provide
15 Google Wallet a “payment method” by entering a credit or debit card number, “Expiration Date”
16 (MM/YY), “Security Code” (CVC), “Billing Information” (including *e.g.* Name, Apt./Suite,
17 City, State, and Zip Code), and Phone Number.

18 32. After a user makes a purchase, Google and/or Google Payment Corp use the user’s Linked
19 Gmail email address to communicate with the user, *e.g.*, to provide receipts for purchases.

20 33. At relevant times the GPToS established that Google operates the Google Play store.

21 34. The GWPP in effect at relevant times identifies both Google and Google Payment Corp as
22 contracting parties who jointly make promises with regard to the provision of Google Wallet to
23 the public and as the entities storing, protecting, and/or processing the personal information of
24 Google Wallet Users, *e.g.* “Google Wallet refers to Google payment services that are provided by
25 both Google Inc. and its wholly owned subsidiaries...[f]or US users, that subsidiary is Google
26 Payment Corporation (“GPC”);” and, “Google takes the privacy of your information seriously.
27
28

1 Your payment information and shipping addresses can be saved in your Google Account to make
2 future purchases more convenient and secure.”⁶

3 ***Google and Google Payment Corp’s Privacy Promises and Rules for Disclosure***

4 35. Speaking to the user, the GToS provide that “Google’s privacy policies explain how we
5 treat your personal data and protect your privacy when you use our Services. By using our
6 Services, you agree that Google can use such data in accordance with our privacy policies.”⁷

7 36. Speaking to the user, the GPP has provided, at relevant times, that Google will “not share
8 personal information with companies, organizations and individuals outside of Google unless one
9 of the following circumstances apply:

10 • **With your consent**

11 We will share personal information with companies, organizations or
12 individuals outside of Google when we have your consent to do so. We
require opt-in consent for the sharing of any sensitive personal information.

13 • **With domain administrators**

14 If your Google Account is managed for you by a domain administrator (for
15 example, for Google Apps users) then your domain administrator and resellers
16 who provide user support to your organization will have access to your
Google Account information (including your email and other data). Your
domain administrator may be able to:

- 17 ○ view statistics regarding your account, like statistics regarding
applications you install.
- 18 ○ change your account password.
- 19 ○ suspend or terminate your account access.
- 20 ○ access or retain information stored as part of your account.
- 21 ○ receive your account information in order to satisfy applicable law,
regulation, legal process or enforceable governmental request.
- 22 ○ restrict your ability to delete or edit information or privacy settings.
- Please refer to your domain administrator’s privacy policy for more information.

23 • **For external processing**

24 We provide personal information to our affiliates or other trusted businesses or
25 persons to process it for us, based on our instructions and in compliance with our
Privacy Policy and any other appropriate confidentiality and security measures.

26 • **For legal reasons**

27 ⁶ See <https://support.google.com/wallet/answer/39332?hl=en>, accessed August 6, 2013.

28 ⁷ See <http://www.google.com/intl/en/policies/terms/>, accessed September 3, 2013 [hereinafter GToS].

1 We will share personal information with companies, organizations or individuals
2 outside of Google if we have a good-faith belief that access, use, preservation or
disclosure of the information is reasonably necessary to:

- 3 • meet any applicable law, regulation, legal process or enforceable governmental
request.
4 • enforce applicable Terms of Service, including investigation of potential
violations.
5 • detect, prevent, or otherwise address fraud, security or technical issues.
6 • protect against harm to the rights, property or safety of Google, our users or the
public as required or permitted by law.

7
8 37. The GWPP, incorporated into the GWToS (the GWPP and GWToS are, collectively
9 hereinafter, the "Wallet Terms" unless otherwise noted), provides:

10 The Google Privacy Policy describes how we treat personal information when
11 you use Google's products and services. "Google Wallet" is a product offered to
12 Google Account holders. Your use of Google Wallet is therefore subject to the
Google Privacy Policy. In addition, the following notice describes our privacy
practices that are specific to Google Wallet.

13 and that Google and Google Payment Corp will only share a user's personal information with
14 other companies or individuals outside of Google: (i) as permitted under the GPP; (ii) as
15 necessary to process the users' transaction and maintain the user's account; and (iii) to complete
16 the user's registration for a service provided by a third party.⁸

17 ***Third-Party Vendors***

18 38. A third-party vendor wishing to utilize Google Play to sell and electronically distribute
19 Apps is required to first have an existing Google Account.

20 39. Third-party vendors using Google Play are also required to have a Google Checkout
21 Account, which is the merchant side of the Google Wallet service, and to pay a \$25 Google Play
22 registration fee to Google via Google Wallet in order to use the Google Services to market their
23 Apps.

24 40. Upon a user's purchase of a third-party vendor's App, Defendant Google Payment Corp
25 charges and collects fees from the user and remit the remainder to the third-party vendor via
26 Google Checkout.

27 ⁸ See, <http://wallet.google.com/files/privacy.html>, accessed September 3, 2013 [hereinafter
28 GWPP].

1 41. Users are customers of Defendants' services and Defendants earn money as a result of
2 users' utilization of Defendants' services to digitally obtain Apps.

3 42. In exchange for registering for Google Checkout, third-party App vendors can access a
4 record of every Google Wallet purchase of one of their Apps, including SID of the buyer via the
5 Google Checkout vendor portal. The Google Checkout vendor portal resembles an email inbox
6 with new purchases in one list and a list of all older purchases in an archive list. If third-party
7 App vendors select any specific entry from either list they can see the personally identifiable user
8 information in question in the "Shipping Information" field. This information is available to
9 vendors from the time of purchase and continues to be available on an ongoing basis thereafter.
10 A vendor can continue to sign on and view every prior purchase in the "archive" section of the
11 vendor portal, including the purchasers' identifying information, long after the purchase was
12 originally made and the product provided to the user.

13 43. The Google Checkout vendor portal also tells the third-party App vendor whether the
14 payment is guaranteed by Google and/or Google Payment Corp in advance of the actual transfer
15 of funds and notifies the vendor once payment has been effected, after processing the user's credit
16 card or other payment method for that purchase.⁹

17 44. None of the above-described personal information, including *e.g.* the user's full name
18 need be given to the vendor to effectuate the electronic sale or electronically deliver payment
19 from Google Checkout to the vendor.

20 *Unauthorized and Unlawful Disclosures*

21 45. Plaintiff and the Class are paying customers of Defendants' services and purchasers of
22 third-party vendor Apps electronically provided via Defendants' services.

23 46. As described more fully above, Plaintiff and similarly situated customers, and Google
24 and/or Google Payment Corp, are parties to overlapping Relevant Terms governing the benefits.

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27 ⁹*See, e.g.*
28 http://www.scribbl.com/Content/documents/Microsoft_S3_Apps_SubstantiationFinal_032213.pptx, pgs. 10-12, accessed May 13, 2013 [hereinafter Microsoft Presentation].

rights, and responsibilities of Defendants and users of Google Play store and/or Google Wallet. The "Relevant Terms" include the Wallet Terms, the Google Terms, and the GPToS.

47. When a user purchases an App from the Google Play store, Google transmits the App to the user via the Google Play store and Google Wallet processes the payment of monies from the user to the third-party vendor via Google Wallet. Users may pay into Google Wallet by credit card or by charging the transaction to their wireless carrier account, but Google Wallet is the only choice available to process the payment for Google Play Apps regardless of the source of the monies.

48. Users utilizing Google Wallet to purchase an App through Google Play first select the desired App and initiate the purchase. The user is then prompted to agree to the GWToS and agree to the purchase, and at relevant times, users have additionally been prompted to select a pre-stored Google Wallet payment method or fill out payment information with which the user wishes to make the payment, using Google Wallet, as described above.

49. Then, the user is prompted to verify the purchase and Defendants process the payment. After Defendants process the user's payment, Defendants automatically remit funds to the third-party vendor in addition to the user's name, email address, Google account name, home city and state, zip code, and in some instances telephone number.

50. However, the blanket disclosure of the user's name, email address, telephone number and/or geographic information ("Sensitive Identifiable Data," or "SID") to the third-party vendor is not necessary to process the user's payment for the third-party vendor's App.

51. At no time do Defendants tell users that their SID is being passed on to third-party vendors. Nor do Defendants appear to give third-party vendors an option to choose to receive, or not to receive SID, for any reason.

52. The SID disclosed by Defendants is made available to App vendors as alleged "Shipping Information" despite the facts that: (i) Google provides the software Apps electronically via its Google Play store with no physical product being "shipped;" and (ii) Google Payment Corp processes the payment for the software electronically via Google Wallet.

1 53. The SID disclosed by Defendants to third-party vendors is made available to them, at a
2 minimum, via the third-party vendor's Google Checkout vendor portal.

3 54. At no point do users intend for or agree that the SID they provide Defendants, for the
4 purposes of processing payments, be disclosed to third party vendors, nor did Defendants ask
5 them to agree to such disclosure.

6 55. As described more fully above, the SID that is made available via the Google Checkout
7 vendor portal to third-party vendors is collected by Google and Google Payment Corp when users
8 register for a Google Account and/or Gmail, the Google Play store, and/or Google Wallet.

9 56. Contrary to the above-described terms regarding when and to whom Defendants would
10 disclose a user's personal information, Defendants have provided and continue to provide users'
11 personal information to third-party vendors. None of the limited purposes for which Plaintiff and
12 the Class members' SID could be disclosed, as set forth in the GWPP and GPP, permit disclosure
13 of their information as set forth above. See ¶¶ 36-37.

14 57. Apps are digital products which are electronically processed and transmitted by way of the
15 Google Play store. Apps do not require shipping of any physical product and are merely
16 electronically communicated from Google to the user's device (e.g. smartphone, tablet, or other
17 computing device) which are sent without the need for vendors to have customers' physical
18 location, phone contact information, and/or identity.

19 58. Google's competitor Microsoft does not share personally identifiable information with
20 third-party vendors on its similarly-offered Windows Phone Store, yet users are still able to
21 purchase apps through the Windows Phone Store.

22 59. The Google Play store and Google Wallet services are integrated on the user end. The
23 transaction which results in the unauthorized disclosure of SID is a result of the joint efforts of
24 Google and Google Payment Corp. On information and belief, Google and/or Google Payment
25 Corp are responsible for the design, implementation, and control of the App purchasing process,
26 including without limitation transmission of user information to the vendor, and the Google
27 Checkout vendor portal that shows users' SID being made available to vendors on an ongoing
28 basis without authorization by the user.

60. On February 21, 2013, Hank C. Johnson, U.S. Representative and member of the House Judiciary Committee and Intellectual Property, Competition, and the Internet Subcommittee issued a letter to Google¹⁰ raising a number of concerns over Google's herein alleged practice and specifically requested that Google, in discussing the types of information shared with vendors through Google Wallet, explain how sharing SID with vendor-developers was necessary to process the user's transaction.

61. Congressman Johnson followed with additional comment on March 14, 2013, reiterating the need for terms that actually disclose the sharing of personal information: "...A short notice stating the types of personal information that Google shares with third parties and reasons for sharing would provide users with greater transparency. Unlike a broad statement buried in the Wallet Privacy Notice, a contextual approach might also prevent the consumer surprise and public alarm that predicated my letter."

62. Defendants' practice of forwarding SID to third-party vendors without authorization has drawn recent comment from third-party App vendors who themselves wonder why they are needlessly receiving such data and have disclaimed the need for it.¹¹

63. Due to Defendants' actions, on many occasions users' SID has been disclosed and made accessible, with neither authorization nor necessity, to remote third-party App vendors.

¹⁰ Letter from Hank C. Johnson, Representative of the 4th District of Georgia, to Larry Page, CEO, Google, Inc. (Feb. 21, 2013), available at http://hankjohnson.house.gov/sites/hankjohnson.house.gov/files/documents/Letter_to_Google.pdf [hereinafter Johnson Letter].

¹¹ See, e.g., Jessica Gwynn, *Google under fire for sending users' information to developers*, L.A. Times, Jan. 14, 2013, available at <http://articles.latimes.com/2013/feb/14/business/la-fi-tn-google-under-fire-for-sending-users-information-to-developers-20130213>; Charles Arthur, *Google raises privacy fears as personal details are released to app developers*, The Guardian, Feb. 25, 2013, available at www.guardian.co.uk/technology/2013/feb/25/google-privacy-fears-app-developers; Chris Tomassucci, *Google Playing with your personal info.*, The Daily News, Feb. 17, 2013, available at <http://www.ironmountaindailynews.com/page-blogs/detail/display/1309/Google-Play-ing-with-your-personal-info-article>.

1 ***Google and Google Payment Corp's Disclosures are not Permitted Under the Relevant Terms***

2 64. As described more fully above, Google and/or Google Payment Corp promise in the
3 Relevant Terms to only disclose SID in limited and specific circumstances. None of those
4 circumstances permit the SID disclosures in which Google and/or Google Payment Corp have and
5 continue to engage as described above.

6 65. The Wallet Terms do not permit the disclosures. The blanket disclosure to third-party App
7 vendors of a combination of users' names, Google account names, Gmail addresses, location
8 information, and in some cases telephone numbers is not: (i) permitted under the GPP, as
9 described more fully below; (ii) necessary to process the user's transaction and maintain the
10 user's account, as the payment processing and electronic app transmission are handled by Google
11 Payment Corp via Google Wallet/Checkout and Google via the Google Play Store, respectively;
12 or (iii) necessary to complete the user's registration for a service provided by a third party, as
13 processing payment for purchase of Apps in the Google Play Store does not require Google to
14 register users for third-party services and, moreover, once a user downloads an App the third-
15 party vendor and the user can interact directly (e.g., via email without the need for the users'
16 names). Indeed, Defendant Google provides third-party vendors' contact information in App
17 detail pages expressly so that users may contact them.

18 66. Nor does the GPP permit the above-described SID disclosures. The GPP outlines limited
19 situations in which Google may disclose personal information, none of which apply to the facts at
20 hand (namely, the purchase and download of Apps using Google Wallet and Google Play):

21 a. Users have not given their consent for these disclosures and in fact most users are
22 likely completely unaware of these disclosures, as described more fully above.

23 b. The third-party App vendors in question are not domain administrators for the
24 users' accounts and thus that exception does not apply to the facts alleged herein.

25 c. The third-party App vendors in question are not engaged in external processing of
26 personal information on Google's behalf and thus that exception does not apply to the facts
27 alleged herein.

1 d. None of the legal bases for disclosure specified in the GPP applies to the facts
2 herein alleged. The disclosures at issue are not related to or reasonably necessary to: meet any
3 applicable law, regulation, legal process or enforceable governmental request; enforce applicable
4 Terms of Service, including investigation of potential violations; detect, prevent, or otherwise
5 address fraud, security or technical issues; protect against harm to the rights, property or safety of
6 Google, users or the public as required or permitted by law.

7 67. Thus, neither of the above described Google and Google Wallet privacy policies permits
8 the disclosures of SID to third-party App vendors via the Google Checkout vendor portal as
9 described more fully above.

10 ***Plaintiff's Experience***

11 68. On or about November 12, 2012, Plaintiff registered an email account with Google and
12 thereby, according to Google, agreed with Google to the Google Terms of Service and Google
13 Privacy Policy.

14 69. On or about May 6, 2013, Plaintiff registered a Google Play account and thereby,
15 according to Google, agreed to the Google Play Terms of Service with Google.

16 70. On May 6, 2013, Plaintiff registered with Google Wallet and thereby, according to Google
17 and Google Payment Corp, agreed to the Google Wallet Terms of Service and the Google Wallet
18 Privacy Policy with Google and Google Payment Corp.

19 71. In the process of registering for the above services Plaintiff provided, at relevant times and
20 at the prompting of Defendants, her full name, and her credit card and billing information such as
21 the city and zip code in which she resides and her phone number, as set forth more fully above.

22 72. Upon creation of her Gmail account Google assigned her a username and email which are
23 associated, by Google, with the above-described Google services and which was used by Google
24 and/or Google Payment Corp to send her, among other things, receipt information for her App
25 purchase made using the Google Play Store and Google Wallet.

26 73. On information and belief, when Plaintiff purchased Apps through the Google Play store
27 her SID, including for example her name, Google account name and email address, city and/or
28

1 80. By improperly disclosing Plaintiff and other users' SID to third-party vendors, Defendants
2 denied them the service bargained for (*i.e.*, the receipt of paid-for content without unnecessary
3 disclosure of SID), failed to provide payment and download services as promised and without
4 disclosure of SID except as consistent with and pursuant to the above-described protections in the
5 Relevant Terms, and denied them the benefit of the bargain and diminished the value of their
6 purchases using Google Play and Google Wallet.

7 81. Defendants have pocketed monies from Plaintiff and Class' App purchases, despite their
8 undisclosed transmission of SID to vendors contrary to the Relevant Terms.

9 82. Defendants, by virtue of their above-described disclosures, have conferred a benefit to
10 third-party vendors, and an accompanying loss of economic and proprietary value to Plaintiff and
11 the Class by virtue of their payment of monies for the App purchases and the nature of the
12 disclosures.

13 83. The SID improperly disclosed by Defendants to third-party vendors – and any unknown
14 individuals operating those third-party vendors – is a merchantable asset of the sort that is priced,
15 bought, and sold in discrete units for marketing and other purposes. It has been observed that
16 “[w]ebsites and stores can...easily buy and sell information...with the intention of merging
17 behavioral data with demographic and geographic data in ways that will create social categories
18 that advertisers covet and target with ads tailored to them or people like them.”¹² The FTC has
19 observed that companies will pay premiums for the ability to precisely target certain consumers.¹³
20 On February 28, 2011, the *Wall Street Journal* published the article “Web’s Hot New
21 Commodity: Privacy” that highlighted Allow, Ltd., one of nearly a dozen companies which offer
22 to sell people’s personal information for profit. Further, in *Property, Privacy, and Personal Data*,
23 Professor Paul M. Schwartz wrote:

24
25 ¹² Joseph Turow, Jennifer Kig, Chris Jay Hoofnagle, Amy Bleakley & Michael Hennessy,
26 *Americans Reject Tailored Advertising and Three Activities That Enable It*, Sept. 29, 2009,
available at http://papers.ssrn.com/sol3/papers/papers.cfm?abstract_id=1478214

27 ¹³ F.T.C., *Protecting Consumer Privacy in an Era of Rapid Change*, Preliminary Staff Report
28 (Dec. 2010), at 24.

1 [P]ersonal information is an important currency in the new millennium. The
2 monetary value of personal data is large and still growing, and corporate America
3 is moving quickly to profit from this trend. Companies view this information as a
4 corporate asset and have invested heavily in software that facilitates the collection
5 of consumer information.¹⁴

6 84. Speaking to the users Defendants state that in the GWPP they “are not responsible
7 for which vendors or other third parties you choose to share information with from
8 Google Wallet.” Despite that affirmation, Defendants’ have, by assuming responsibility
9 for disclosing the SID at issue without necessity or user consent, provided a marketable
10 asset to third-party vendors and denied Plaintiff and the Class the value of choosing
11 whether to reveal their identities, contact information and/or other personal information
12 to those same online vendors.

13 ***Defendants Expose Plaintiff and the Class to Imminent Harm***

14 85. Identity theft is rampant online, and often results in expenditures in the name of those
15 victimized. The FTC reported that in 2012, consumers’ out-of-pocket expenditures due to
16 identity theft reached nearly \$1.5 billion.¹⁵ The 2013 Identity Fraud Report released in February
17 2013 by Javelin Strategy & Research found that in 2012 more than \$21 billion was stolen via
18 identity theft, and there were more than 12.6 million victims of identity fraud in the United States
19 in the past year.¹⁶

20 86. An identity thief needs only a name to begin the process of ultimately obtaining access to
21 an individual’s financial account information.¹⁷

22 ¹⁴ Paul M. Schwartz, *Property Privacy, and Personal Data*, 117 Harv. L. Rev. 2055, 2056-57
23 (2004).

24 ¹⁵ Consumer Sentinel Network, F.T.C., Data Book, at 7 (2012), available at
25 <http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2012.pdf>.

26 ¹⁶ Javelin Strategy & Research. (2013). *2013 IDENTITY FRAUD REPORT: Data Breaches
27 Becoming a Treasure Trove for Fraudsters*, [Brochure], available at
28 https://www.javelinstrategy.com/uploads/web_brochure/1303.R_2013IdentityFraudBrochure.pdf.

¹⁷ See, e.g., Herbert H. Thompson, *How I Stole Someone’s Identity*, Scientific American, Aug. 18,
2008, available at, <http://www.scientificamerican.com/article.cfm?id=anatomy-of-a-social-hack>.

1 87. Google has acknowledged that the most sought after information in online security attacks
2 is personal information, sought primarily for the purpose of ultimately using the personal
3 information to steal money.¹⁸

4 88. The magnitude of harm in the event of identity theft is significant, creating on average of
5 nearly \$5,000 of loss and requiring victims to spend an average of 330 hours and hundreds of
6 dollars to resolve the damage.¹⁹

7 89. Defendants' disclosure of Plaintiff and the Class' SID to third parties without Plaintiff and
8 the Class' knowledge exposes Plaintiff and the Class to a significant and imminently greater risk
9 of identity theft than the risk faced by Plaintiff and the Class in the absence of Defendants'
10 disclosures.

11 **Class Allegations**

12 90. Pursuant to Fed. R. Civ. P. 23, Plaintiff brings this action as a class action on behalf of
13 herself and the following presently defined Class: all persons in the United States who utilized
14 the Google Wallet service to purchase Apps via Google Play between September 19, 2011 and
15 the date of class certification ("Class Period"). Excluded from the proposed Class are Plaintiff's
16 counsel, Defendants' counsel, Defendants' current and former officers and directors, and any
17 member of the judiciary presiding over this action.²⁰

18 91. Pursuant to Fed. R. Civ. P. 23(a)(1), the members of the Class are so numerous that
19 individual joinder of their claims is impracticable.

20 92. Pursuant to Fed. Rs. Civ. P. 23(a)(2) and (b)(3), there are questions of law and fact
21 common to Plaintiff and the other Class members, which common questions predominate over

22 ¹⁸ See, e.g., Google Tech Talks, "How Cybercriminals Steal Money" by Neel Daswani at 5:25
23 (June 16, 2008), (citing Breach Security, Web Hacking Incidents Database Report), available at
<http://www.youtube.com/watch?v=jC6Q1uCnbMo>, accessed August 7, 2013.

24 ¹⁹ Sam Franada, *Identity Theft Why You Should Be Worried*,
25 <http://rack.3.mshcdn.com/media/ZgkyMDEyLzEyLzA2LzFkL2lkdGhlZnRzbS40QWwuanBnCnAJdGh1bWIJMTIwMlHg5NjAwPg/2997b5cf/a59/id-theft-sm.jpg> accessed also available at
26 Linda Foley and Jay Foley, Identity Theft Resource Center, *IDENTITY THEFT: THE*
AFTERMATH 2004, September 2005, available at
27 http://leg.mt.gov/content/com.mittees/interim/2005_2006/econ_affairs/minutes/10282005exhibits/EACM10282005_exhibit8.pdf, accessed September 3, 2013.

28 ²⁰ The class definition is subject to modification as appropriate and/or pursuant to discovery.

any questions affecting only individual members. Pursuant to Defendants' above-described conduct, the common questions of law and fact include, but are not limited to:

- a. Did Defendants disclose Plaintiff and Class members' SID to third-party vendors;
- b. Was Defendants' disclosure of SID to third-party vendors necessary to process App purchases;
- c. Did Defendants employ standardized promises, relating to disclosure of user information, in connection with App sales via Google Play and/or Wallet?
- d. Did Defendants employ standardized policies, relating to disclosure of user information, in connection with App sales via Google Play and/or Wallet?
- e. Did Defendants' blanket disclosure of SID to third-party vendors breach the Relevant Terms and/or portions thereof;
- f. Did Defendants' blanket disclosure of SID to third-party vendors breach Defendants' duties of good faith and fair dealing stemming from the Relevant Terms;
- g. Do Defendants qualify as electronic communications services as that term is defined in the Stored Communications Act, 18 U.S.C. § 2510(15);
- h. Do Defendants qualify as remote computing services as that term is defined in the Stored Communications Act, 18 U.S.C. § 2711(2);
- i. Did Defendants' blanket disclosure of SID to third-party vendors purchases violate 18 U.S.C. § 2701;
- j. Did Defendants' blanket disclosure of SID to third-party vendors in the process of completing Plaintiff and the Class members' Google Play App purchases violate 18 U.S.C. § 2702;
- k. Did Defendants' herein-described conduct violate the Unfair Competition Law, Cal. Bus. Prof. Code § 17200 *et seq.*; and
- l. Did Plaintiff and the Class lose money and/or property due to Defendants' herein-described conduct?

93. Pursuant to Fed. R. Civ. P. 23(a)(3), Plaintiff's claims are typical of the claims of other members of the Class, who used the Google Wallet processing service during the Class Period and whose SID was disclosed to third party vendors without authorization.

94. Plaintiff has no adverse or antagonistic interests to those of the Class and has retained counsel experienced in complex consumer class action litigation.

95. A class action is superior to other available means for the fair and efficient adjudication of this controversy and concerns standardized conduct and terms. The damage suffered by individual Class members is relatively small compared to the burden and expense entailed by

1 individual litigation of the claims against Defendants. Even if select Class members could afford
2 individualized litigation, the court system could not. Individualized litigation would also increase
3 the delay and expense to all parties and the court system from the issues raised by this action. By
4 contrast, the class action device provides the benefit of a single adjudication of the issues at bar,
5 and presents no unusual management difficulties under the circumstances here.

6 96. Alternatively, per Fed. R. Civ. P. 23(b)(2), here Defendants have acted or refused to act on
7 grounds that apply generally to the Class, so that final injunctive relief or corresponding
8 declaratory relief is appropriate respecting the class as a whole.

9 97. The claims asserted herein are based on California law, which, Defendants purport, is
10 applicable to the Class as a whole by virtue of the Google Terms of Service and Google Wallet
11 Terms of Service choice of law provisions.

12 **Count I -- Breach of Contract**

13 98. Plaintiff realleges each of the preceding paragraphs as if fully set forth herein, and brings
14 this cause of action individually and on behalf of the Class.

15 99. The Relevant Terms describe rights, obligations and services provided through the use of
16 the Google Play store and Google Wallet.

17 100. At relevant times, Defendants each and/or jointly solicited Plaintiff and the Class to
18 provide personal contact and billing information, which Defendants used to establish Google
19 accounts, email addresses, and/or to provide the Google Services, consistent with the above-
20 described terms. In exchange, Plaintiff and the Class agreed to register with the Google Play
21 store and Google Wallet to allow Defendants to process their purchase and payment transactions
22 in connection with provision and sale of Apps. These transactions thereby allow Google Payment
23 Corp to earn a fee for processing the payment.

24 101. According to Defendants, Plaintiff and the Class, upon using the Google Wallet service to
25 purchase Apps delivered via Google Play during the Class Period, agreed to Defendants' above-
26 described terms.

27 102. As set forth above, according to Defendants, Plaintiff and the Class accepted the Relevant
28 Terms by registering with Google and Google Wallet and purchasing Apps with Google Wallet

1 via the Google Play store. As such, the GWPP and GPP, as incorporated into the GWToS,
2 constitute a valid and enforceable contract between Plaintiff and the Class and Defendants.

3 103. In the GWPP, Google and Google Payment Corp agreed at relevant times, among other
4 things, to share Plaintiff and the Class's information with third parties only: (i) as permitted under
5 the GPP; (ii) as necessary to process the user's transaction and maintain the user's account; and
6 (iii) to complete the user's registration for a service provided by a third party.

7 104. The GPP lists a discrete set of circumstances under which user personal information will
8 be shared with vendors and none of those exceptions is applicable to the disclosure of SID
9 described herein to third-party App vendors, as described more fully above. See *supra* ¶¶ 36-37.

10 105. As more fully set forth above in ¶¶ 36-37, disclosure of SID to third-party App vendors
11 was not permitted under any of these limited exceptions, and Defendants breached said contracts
12 with Plaintiff and the Class by needlessly disclosing their SID to third-party vendors in the course
13 of processing their Google Wallet App purchases without authorization.

14 106. Effectively functioning as a middle-man, Defendants insulate users from third-party App
15 vendors by processing the users' credit card transactions, transmitting payments to the third-party
16 vendors, and delivering the Apps to users via the Google Play Store. As such, the SID disclosed
17 by Defendants is neither necessary to deliver software Apps nor to transmit payment for said
18 Apps. Nor is it necessary to disclose the SID to third-party vendors to maintain the users' Google
19 services accounts as the third-party vendors do not maintain Google service accounts. Nor is it
20 necessary to disclose the users' SID to third-party vendors, upon purchase of an App, to register
21 users for a "third party service" as users are free to interact directly with the third-party vendors
22 via the App if the App provides a service and requires any registration. Nor are these disclosures
23 expressly allowed by the GPP or any of the other relevant terms as described more fully above.

24 107. Plaintiff and the Class did all or substantially all of the significant things required of them
25 by the Relevant Terms and registered with Google, Google Wallet, and Google Play, and
26 purchased an App via Google Play and Wallet. In return Plaintiff and the Class expected Google
27 and Google Payment Corp to fulfill their obligations under the Relevant Terms and only disclose
28 SID in the limited instances outlined therein. As discussed above, Defendants instead provided

1 blanket disclosures to third-party vendors without necessity, consent or any other legitimate
2 justification under the contract.

3 108. Plaintiff and the Class are damaged and are alternatively entitled to restitution for
4 Defendants' unjust enrichment due to Defendants' aforesaid breaches.

5 **Count II - Breach of Covenant of Good Faith and Fair Dealing**

6 109. Plaintiff realleges each of the preceding paragraphs as if fully set forth herein, and brings
7 this cause of action individually and on behalf of the Class, and insofar as required by applicable
8 facts or law, in the alternative to Count I.

9 110. As part of the above-described contract, Defendants owed Plaintiff and the Class an
10 implied duty of good faith and fair dealing.

11 111. The Relevant Terms give Plaintiff and the Class the reasonable expectation that their SID
12 would not be given to third-party App vendors when purchasing Apps via the Google Play store
13 and Google Wallet, as more fully set forth above. See ¶¶ 36-37.

14 112. However, the Relevant Terms are standardized and non-negotiable terms, which
15 Defendants, at their own discretion, interpreted to carry out the above-described privacy promises
16 as they saw fit, in a way that resulted in transmission of Plaintiff and other Class members' SID to
17 third-party App vendors.

18 113. For example, while Defendants may share personal information, like *e.g.* SID, with third-
19 parties if "necessary to process the user's transaction and maintain the user's account" as per the
20 GWPP, that provision is not reasonably interpreted to allow blanket disclosure of any or all of the
21 SID to App vendors on grounds of necessity or account maintenance, as set forth more fully
22 above.

23 114. Defendants' SID disclosures run contrary to the parties' reasonable expectations and a
24 reasonable interpretation of the Relevant Terms, and interfered with Plaintiff and the Class's right
25 to receive the full benefits of the contract -- namely, the purchase and download of Apps without
26 the unnecessary and unauthorized disclosure of SID to third-parties and certainly including App
27 vendors.

28 115. As a result, Plaintiff and the Class were damaged and Defendants were and continue to be
Class Action Complaint

1 unjustly enriched.

2 **Count III-- Violation of the Stored Communications Act, 18 U.S.C. § 2701**

3 116. Plaintiff realleges each of the preceding paragraphs as if fully set forth herein, and brings
4 this cause of action individually and on behalf of the Class.

5 117. The Stored Communications Act provides that “[w]hoever...intentionally accesses
6 without authorization a facility through which an electronic communication service is
7 provided...or...intentionally exceeds an authorization to access that facility...and thereby
8 obtains, alters, or prevents authorized access to a wire or electronic communication while it is in
9 electronic storage in such system shall be punished as provided in subsection (b) of this section.”
10 18 U.S.C. §§ 2701(a)(1) (2).

11 118. Defendants, individually and/or jointly, solicited Plaintiff and the Class to electronically
12 provide personal contact and billing information, *e.g.* including without limitation Google’s
13 request for users’ names to create a Google account and/or Gmail address, Google Payment
14 Corp’s request for billing and credit card information for the purpose of processing payments, and
15 Defendants’ request for the above-described SID as part of Google Wallet registration and/or
16 purchases using Google Play and Google Wallet, pursuant to the Relevant Terms, as more fully
17 set forth above.

18 119. Defendants both utilize server facilities in order to provide their electronic communication
19 and/or remote computing services at issue as that term is defined in 18 U.S.C. § 2510(15) and
20 store personal information in said server facilities.

21 120. Pursuant to the Relevant Terms, Defendants are only authorized to disclose to third parties
22 a user’s personal information with third-party companies or individuals: (i) as permitted under the
23 GPP; (ii) as necessary to process the user’s transaction and maintain the user’s account; and (iii)
24 to complete the user’s registration for a service provided by a third party.

25 121. Defendants had no authorization to disclose, to third-party vendors, Plaintiff’s and other
26 Class members’ SID; disclosure of this information was not necessary to process their purchase
27 transactions, to maintain their Wallet (or Google) accounts, to complete registration by Google
28

1 for user's with third-party Apps, or for the limited purposes or exceptions set forth in the GPP as
2 described above.

3 122. Plaintiff and the Class did not expressly or specifically authorize Defendants to provide
4 third-party vendors with their SID in a blanket fashion or with access to all of it in a blanket
5 manner.

6 123. The transactions at issue – the remote download of and payment for software – do not
7 require all the SID at issue to be transferred to the third-party App vendor who receives payment
8 from Google Payment Corp and/or Google. No specific exceptions to Defendants' privacy
9 promises apply to the transactions at issue or the blanket disclosures of SID alleged herein, as
10 described more fully above. ¶¶ 36-37.

11 124. In the course of processing Plaintiff and the Class's Google Wallet App online purchases,
12 Defendants exceeded their authorized access to the facilities through which Defendants provide
13 the electronic communications services at issue and within which their SID was stored on
14 Defendants' servers, by unnecessarily transmitting or making available their SID to third-party
15 App vendors.

16 125. Defendants thereby altered access to the SID while it was at least temporarily maintained
17 on Defendants' servers by transmitting and/or allowing third-party vendors access to the SID via
18 the Google Checkout vendor portal.

19 126. Defendants intentionally disclosed Plaintiff and the Class' SID to third-parties as
20 described more fully above.

21 127. Defendants neither had authorization nor received authorization from Plaintiff and the
22 Class to effect a blanket disclosure to third-parties of the SID at issue.

23 128. As a result of Google's unauthorized and unlawful disclosure of Plaintiff's and the Class
24 members' SID, Plaintiff and members of the Class have suffered damages from Google's
25 violations of 18 U.S.C. § 2701.

26 129. Plaintiff and Class members are aggrieved persons who have suffered damage as a result
27 of knowing violation of the Stored Communications Act within the meaning of 18 U.S.C. §
28 2707(a).

1 130. Plaintiff and members of the Class seek all available remedies as provided by 18 U.S.C. §
2 2707(b) and (c), including such preliminary and other equitable or declaratory relief as may be
3 appropriate, damages consistent with § 2707(c), and any applicable punitive damages to be
4 proven at trial, and attorneys' fees and costs.

5 **Count IV – Violation of the Stored Communications Act, 18 U.S.C. § 2702**

6 131. Plaintiff realleges each of the preceding paragraphs as if fully set forth herein, and brings
7 this cause of action individually and on behalf of the Class.

8 132. The Stored Communications Act provides that "...a person or entity providing an
9 electronic communication service to the public shall not knowingly divulge to any person or
10 entity the contents of a communication while in electronic storage by that service." 18 U.S.C. §
11 2702(a)(1).

12 133. The Stored Communications Act provides that "...a person or entity providing remote
13 computing service to the public shall not knowingly divulge to any person or entity the contents
14 of any communication which is carried or maintained on that service...on behalf of, and received
15 by means of electronic transmission from (or created by means of computer processing of
16 communications received by means of electronic transmission from), a subscriber or customer of
17 such service." 18 U.S.C. § 2702(a)(2)(A).

18 134. Google, at relevant times, has provided a variety of electronic communication services to
19 account holders, including Plaintiff and the Class, such as the electronic transmission of Apps and
20 payment instrument information by way of Google Play and Google Wallet, and qualifies as an
21 electronic communication service under 18 U.S.C. § 2510(15).

22 135. Google publicly provides a variety of computer processing services, including without
23 limitation digital content distribution services via Google Play, and qualifies as a remote
24 computing service under 18 U.S.C. § 2711(2).

25 136. Google Payment Corp provides electronic communications service to Google and account
26 holders, including without limitation the transmission of payment instrument information by and
27 among financial institutions to process electronic payment transactions via Google Wallet, and
28 qualifies as an electronic communications service under 18 U.S.C. § 2510(15).

1 137. Google Payment Corp, which publicly provides electronic payment processing services,
2 qualifies as a remote computing service under 18 U.S.C. § 2711(2).

3 138. At relevant times, Plaintiff and the Class members were subscribers to and customers of
4 Defendants' services.

5 139. Defendants at relevant times solicited users to electronically communicate personal
6 contact and billing information which both Defendants have maintained in electronic storage on
7 servers in connection with processing and communicating related to Google Play App purchases
8 and downloads and Google Wallet App payment transactions for Plaintiff and the Class during
9 the Class period.

10 140. In the course of processing Plaintiff and the Class members' above-described payments,
11 Defendants knowingly and without authorization divulged to third-party vendors, via the Google
12 Checkout vendor portal and as a direct result of purchases of Apps from the Google Play store,
13 Plaintiff and the Class members' customer SID which: (i) they had electronically communicated
14 to Defendants; (ii) was at least temporarily maintained on Defendants' servers; (iii) is not needed
15 to process Google Wallet payment transactions and/or deliver the Apps purchased through
16 Google Play; and (iv) does not serve to protect any of Defendants' rights or property.

17 141. The transactions at issue, remote download of an app and payment for software, do not require
18 blanket transfers of SID to the third-party vendor who provides the app via Google Play and
19 receives payment from Google Payment Corp and/or Google, nor do any of the other specific
20 exceptions to Defendants' privacy promises, described more fully above, apply to the transactions
21 at issue or the blanket disclosures of SID alleged herein.

22 142. Plaintiff and the Class did not consent to Defendants' blanket disclosure of the SID to
23 third-party App vendors, and did not consent or intend for their SID to be unnecessarily divulged
24 to third-party vendors.

25 143. Defendants, by disclosing the SID of Plaintiff and the Class without authorization, have
26 knowingly divulged the contents of communications of Plaintiff and members of the Class while
27 those communications were in electronic storage on its service, and continue to do so, in violation
28 of 18 U.S.C. §§ 2702(a)(1), 2702(a)(2).

1 144. Defendants intentionally disclosed users' SID to third parties as described more fully
2 above.

3 145. As a result of Defendants' unauthorized and unlawful disclosure of Plaintiff's and the
4 Class' SID, Defendants are in violation of 18 U.S.C. § 2702, and Plaintiff and the Class have
5 suffered damages.

6 146. Plaintiff and the Class are "person[s] aggrieved by [a] violation of [the SCA] in which the
7 conduct constituting the violation is engaged in with a knowing or intentional state or mind..."
8 within the meaning of 18 U.S.C. § 2707(a), and seek all available remedies as provided for by 18
9 U.S.C. § 2707(b) and (c), including such preliminary and other equitable or declaratory relief as
10 may be appropriate, as well as damages consistent with § 2707(c) and punitive damages in
11 amounts to be proven at trial, and attorneys' fees and costs.

12 **Count V -- Violation of the Unfair Competition Law ("UCL"), Cal. Bus. Prof. Code § 17200**

13 147. Plaintiff realleges each of the preceding paragraphs as if fully set forth herein, and brings
14 this cause of action individually and on behalf of the Class.

15 148. Defendants' conduct and decisions giving rise to Plaintiff and the Class's claims, on
16 information and belief in substantial part took place at Defendants' shared primary place of
17 business in California. Defendants, via the Relevant Terms' choice of law provisions, have
18 asserted that the laws of the State of California shall apply to litigation concerning their services.

19 149. Defendants' acts and practices as alleged herein constitute unlawful and unfair business
20 practices in violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,
21 *et seq.*

22 ***Unlawful Conduct***

23 150. Class Defendants' above-described conduct violates the Stored Communications Act, §§
24 2701, 2702(a)(1), and 2702(a)(2), and Defendants' own proffered contractual terms, as set forth
25 more fully above.

26 151. Additionally, California Business & Professions Code § 22576 prohibits Defendants from
27 violating their own privacy policies as set forth above. For example, according to GWPP,
28 Defendants would only share Plaintiff and the Class' personal information with other companies

1 outside of Google: (i) as permitted under the GPP; (ii) as necessary to process the transaction and
2 maintain the account; and (iii) to complete the registration for a service provided by a third party.

3 152. Google's business acts and practices of unnecessary and unauthorized disclosures to third-
4 party vendors of identity, location, phone number, and information provided to Defendants by
5 Plaintiff and the Class are unlawful because they violate the Relevant Terms and the Defendants'
6 duties of good faith and fair dealing with regard to said terms.

7 ***Unfair Conduct***

8 153. In the alternative, Google's conduct, as alleged herein, is oppressive, immoral, unethical,
9 and unscrupulous and caused Plaintiff and the Class substantial injury, in violation of the UCL's
10 prohibition against "unfair" conduct, Cal. Bus. and Prof. Code § 17200, *et seq.*

11 154. Defendants have no reasonable or legitimate justification under the Relevant Terms to
12 disclose SID to third party vendors in the blanket fashion described above, and Defendants'
13 practice violates the reasonable expectations created by the Relevant Terms.

14 155. As set forth above, Defendants' processing of Plaintiff and the Class' App purchases is
15 accompanied by Defendants' request for agreement to the Relevant Terms, which promise to
16 protect their privacy, but which Defendants did not do, and which do not authorize unnecessary
17 transfer of SID to third-party vendors as Defendants have done.

18 156. Defendant Google Payment Corp is unjustly enriched and unfairly profit – in the form of
19 transaction fees – from Plaintiff and other Class members' purchases of Apps via Google Wallet
20 and the Google Play store because Plaintiff and the Class did not authorize Defendants to disclose
21 the SID to third party vendors.

22 157. Plaintiff and the Class paid Defendants for the benefit of using the Google Play store and
23 Google Wallet to purchase and pay for Apps in a fashion that protects, according to the terms and
24 conditions outlined above, their privacy.

25 158. Defendants, by providing and continuing to provide SID to third-party vendors in what
26 would otherwise be an anonymous online transaction, have caused substantial harm to Plaintiff
27 and the Class.

1 159. Defendants could have easily avoided causing the injuries suffered by Plaintiff and the
2 Class by simply refraining from making the SID accessible to third-party vendors via the Google
3 Checkout portal, but Plaintiff and the Class were powerless to stop Defendants from disclosing
4 their SID to App vendors because Defendants' exercised their own discretion to share this
5 information, which enhances their business with their vendor-seller customers to the detriment of
6 Plaintiff and the Class without providing countervailing benefit to Plaintiff and the Class.

7 160. Defendants' practice offends the public policy tethered to the State constitutional right of
8 privacy, Const. art. I, § 1.

9 161. Defendants' practice directly contradicts the policy underlying the California Attorney
10 General's Joint Statement of Principles ("Statement") to which Google and other major App
11 marketers (including, e.g., Apple and Microsoft) agreed on or about February 22, 2012.²¹ For
12 example, Google has agreed that any App developer, presumptively including Google itself
13 where it directly markets Google Apps, "must conspicuously post a privacy policy or other
14 statement describing the app's privacy practices that provides clear and complete information
15 regarding how personal data is collected, used and shared." However, as such Defendants' posted
16 privacy policies do not provide such a statement and are incomplete, as described more fully
17 above. For example, the Relevant Terms promise to disclose users' SID where necessary or with
18 explicit permission (neither of which is the case with regard to the blanket disclosures of SID at
19 issue).

20 162. Defendants' practice directly contradicts the policy outlined in the Consumer Privacy Bill
21 of Rights, introduced by the White House in February of 2012.²² Specifically, Defendants'
22 conduct violates the following provisions of that policy:

- 23 • Individual Control: Consumers have a right to exercise control over what personal
24 data companies collect from them and how they use it.

25 ²¹ Available at <http://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-secures-global-agreement-strengthen-privacy>, viewed on July 23, 2013.

26 ²² Available at <http://www.whitehouse.gov/sites/default/files/privacy-final.pdf>, viewed on July
27 23, 2013, as *CONSUMER DATA PRIVACY IN A NETWORKED WORLD: A FRAMEWORK FOR*
28 *PROTECTING PRIVACY AND PROMOTING INNOVATION IN THE GLOBAL DIGITAL*
ECONOMY (February 2012).

- Transparency: Consumers have a right to easily understandable and accessible information about privacy and security practices.
- Respect for Context: Consumers have a right to expect that companies will collect, use, and disclose personal data in ways that are consistent with the context in which consumers provide the data.
- Security: Consumers have a right to secure and responsible handling of personal data.

By contrast, as set forth above Defendants' conduct has failed to provide users meaningful individual control over what personal data vendors collect and/or how Defendants use the personal data they collect; Defendants' Relevant Terms provide *faux* transparency as they are inaccurate and/or incomplete with regard to how SID is used and/or what SID is transmitted by Defendants to third-party vendors; Defendants have also shown no respect for context (*e.g.* by providing a users' real name to a third-party vendor with every purchase despite having no need or authorization to do so); and Defendants have failed to securely and responsibly handle the SID collected from users.

163. Defendants' practice significantly and imminently increases the risk of identity theft faced by Plaintiff and the Class.

164. As a direct and proximate result of Defendant's above-described unlawful and unfair conduct, Plaintiff and the Class have lost money or property, and are entitled injunctive relief, restitution, restitutionary disgorgement of monies received by Defendants pursuant to their App purchases, and applicable relief allowed under §17200 *et seq.*

Prayer for Relief

WHEREFORE, Plaintiff prays for the following relief:

- a. An order certifying the Class as defined above, and appointing Plaintiff as Class representative and Plaintiff's counsel as class counsel;
- b. A finding and declaration that Defendants, by their above-described conduct, have violated the Stored Communications Act, the California Unfair Competition Law, Cal. Bus. & Prof. Code Sec. 17200 *et seq.*, and California law as set forth above;
- c. An award of injunctive and other equitable relief including, *inter alia*: (i) an order prohibiting Defendants from engaging in the wrongful and unlawful acts described

1 herein; (ii) an order requiring Defendants to refrain from disclosing users
2 information in the absence of those users' specific authorization; and (iii) an order
3 requiring Defendants to conspicuously, precisely, and truthfully display in the
4 Relevant Terms the manner in which they collect data from users and thereafter
5 distribute such data;

6 d. An award of all damages to Plaintiff and the Class available under applicable law,
7 including statutory damages in the amount of \$1,000 per violation under the Stored
8 Communications Act, 18 U.S.C. § 2707(c) and punitive damages as applicable in an
9 amount to be determined at trial;

10 e. An award of restitution and/or restitutionary disgorgement, including interest
11 thereon, to Plaintiff and the Class;

12 f. Establishment of a constructive trust, until further order of the Court, consisting of
13 monies Defendants improperly collected or received from their above-described
14 illicit conduct, including a reasonable portion of the monies collected, from Plaintiff
15 and the Class, in connection with the marketing and sale of Apps via the Google
16 Play store and/or the processing of associated payments via Google Wallet;

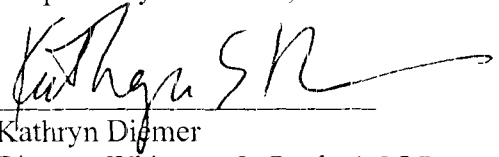
17 g. Reasonable attorneys' fees and costs; and

18 h. Such other and further relief as the Court deems appropriate.

Jury Demand

Plaintiff demands a jury trial as to all matters so triable.

Respectfully submitted,



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